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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/834,085	04/11/2001	Yasuhiro Nishiyama	9281-3943	2759	
75	7590 05/21/2004			EXAMINER	
Brinks Hofer Gilson & Lione			KLIMOWICZ, WILLIAM JOSEPH		
P.O. Box 10395 Chicago, IL 60610		ART UNIT	PAPER NUMBER		
			2652	71/	
			DATE MAILED: 05/21/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Communication   Commu			
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Application/Control Number: 09/834,085

Art Unit: 2652

#### **DETAILED ACTION**

### Claim Status

Claims 4-8, 10-20 and 22-44 are currently pending.

Claims 1-3, 9, 21, 23-28 and 31-34 have been voluntarily cancelled by the Applicants.

Claims 6, 7, 13-20, 22, 35-38, 43 and 44 are withdrawn from consideration as being drawn to an originally non-elected invention.

#### Election/Restrictions

Newly submitted independent claims 35, 43 and 44, and by extension, claims 22 and 36-38 which depend from claim 35 are now directed to an invention that is independent and distinct from the invention originally elected in Paper No. 8 (filed December 9, 2002) for the following reasons: The originally elected claims are required to have a component of *at least* "nitrogen" in their respective claims. Claims 35, 43 and 44 do not in anyway recite or require any nitrogen. As such, these claims are NOT drawn to the elected embodiment and are withdrawn from further consideration.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22, 35-38, 43 and 44 are withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

## Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 39, line 7, the recitation of "the SiON film" lacks proper antecedent basis in the claim, thus rendering the claim as a whole unascertainable, particularly since the only composition previously recited in the claim is drawn to a non-elected embodiment including silicon dioxide (see line 6 of claim 39).

Additionally, since claims 40-42 depend directly or indirectly from claim 39, they too are thus rejected under the second paragraph of 35 U.S.C. § 112.

## Allowable Subject Matter

Claims 4, 5, 8, 10-12, 29 and 30 are allowed.

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#### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Klimowicz whose telephone number is (703) 305-3452. The examiner can normally be reached on Monday-Thursday (6:30AM-5:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa T. Nguyen can be reached on (703) 305-9687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William J. Klimowicz Primary Examiner Art Unit 2652

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